

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

Hearing Dates: April 3 and 4 2002

Subject Matter: BAR-97 Emission Inspection System Specifications
(Addenda 7 and 8) dated December 2001

Sections Affected: §§ 3340.16, 3340.16.5, 3340.16.7, 3340.17, 3340.32
3340.42 and 3340.50, Title 16, Division 33, Chapter
1, Article 5.5, California Code of Regulations

Specific Purpose of the Regulatory Proposal:

Simply put, this regulation requires stations to purchase and utilize the latest version of analyzer software that has been approved by BAR. The existing statutory scheme provides BAR with the authority to require emission analyzer manufacturers to produce the software and have the BAR certify it. In fact, Section 44036 of the Health and Safety Code authorizes BAR to require updates in a very short timeframe if the BAR finds the current software used in the analyzers does not meet the requirements of the Smog Check Program.

The California Legislature, concerned about inspection consistency and consumer protection as the Program is made more comprehensive and stringent, recently granted BAR increased authority against manufacturers. In addition to software updates, Assembly Bill 1560 (Nation, Chapter 357, Statutes of 2001) gives BAR the authority to establish new analyzer hardware requirements, performance standards, and operational requirements. AB 1560 sends a clear message that BAR should have the authority to require improvements to smog check emission analyzers. Clearly, the Legislature sought to further protect consumers in the Smog Check marketplace. It makes little sense for BAR to develop program enhancements and consumer safeguards if smog check stations are not required to purchase the software and hardware that is required to put those enhancements and safeguards in place. The two requirements are inextricably linked.

Therefore, this regulatory change is required to bind the stations into purchasing new software and using it when performing an official smog check inspection. As mentioned earlier, changes to the Program are implemented at the station level; and, to effect the change, the software that directs the technicians how to do a proper inspection must be revised. As a result, this proposed action would amend the specification date reference for emission inspection systems operating in the enhanced program areas of the state.

This proposal makes the following changes to existing regulation:

1. Repeal Section 3340.16.7

This action *repeals* Section 3340.16.7 in its entirety, in order to consolidate its provisions into Section 3340.17. The consolidation, in and of itself will have no regulatory effect. It is being proposed to eliminate duplication, to clarify provisions and to maintain consistency. The changes that are the subject of the emergency adoption are addressed below under Section 3340.17.

2. Amend Section 3340.17

This action *amends* Section 3340.17(a) by adding the provisions of Section 3340.16.7(a) in their entirety. This change will have no regulatory effect as these are existing provisions and no change is being made other than a clarifying, technical change referring to the specifications as the “BAR-90” Test Analyzer System Specifications. The language of existing Section 3340.17(a) is also amended with conforming and grammatical changes that also have no regulatory effect.

This action *amends* Section 3340.17 by adding the provisions of Section 3340.16.7(b) as a new subsection (b) and updates the reference to the Emissions Inspection System Specifications to the current publication of December 2001. The publication date change is one part of the emergency regulation amendment. The remaining changes are conforming, technical changes that have no regulatory effect. The provisions relating to the maintenance and calibration of emissions inspection systems in accordance with the bureau’s BAR-97 Emissions Inspection System Specifications merely restates and rephrases the existing provisions of Section 3340.17(a). While existing subsection (a) refers to the maintenance and calibration of a “test analyzer system,” by definition (see Section 3340.1(g)) the terms “test analyzer system” and “emission inspection system” are one in the same and may be used interchangeably. Therefore, adding this clarification in subsection (b) has no regulatory effect since the requirement already exists in the current subsection (a). The same applies to the requirement to have the most current hardware and software updates required by the bureau.

This action *amends* existing Section 3340.17(b) by renumbering it as (c).

This action *amends* Section 3340.17(c) by renumbering it as (d) and making clarifying, conforming and technical changes without regulatory effect.

This action *amends* Section 3340.17(d) by renumbering it as (e) and making clarifying, conforming and technical changes without regulatory effect.

This action *amends* Section 3340.17(e) by renumbering it as (f) and making clarifying, conforming and technical changes without regulatory effect.

This action *amends* Section 3340.17 by adding subsection (g) to prohibit test analyzer systems and emission inspection systems that do not have the most current hardware and

software updates from performing smog check inspections and transmitting certificates of compliance to the Department of Motor Vehicles. This revision provides BAR with a mechanism to encourage smog check stations to purchase the revised analyzer hardware and software in a timely manner. If stations do not have the latest updates, they can not perform smog checks properly.

3. Amend Sections 3340.16, 3340.16.5, 3340.32, 3340.42 and 3340.50

This action *amends* Sections 3340.16, 3340.16.5, 3340.32, 3340.42 and 3340.50 by making conforming changes without regulatory effect. Specifically, the reference to Section 3340.16.7 in each of the affected sections is changed to conform to the repeal of that section and its consolidation with Section 3340.17.

Factual Basis:

On July 12, 2000, the California Air Resources Board (ARB) released a report on the effectiveness of the Smog Check Program (Program). ARB's report indicates that while the current Program is reducing a significant amount of motor vehicle emissions, improvements to the Program must be made if California is to meet federal air quality standards. For example, California's 1995 State Implementation Plan - the blueprint submitted to the United States Environmental Protection Agency (USEPA) that explains how the state will achieve compliance – claimed an emissions reduction of 112 tons per day (tpd) for the Program. After careful analysis, the emissions reductions associated with the current Program are closer to 65 tpd.

From many perspectives, achieving compliance with the federal air quality standards is vitally important to California. The federal government may withhold highway trust funds or impose other sanctions on the state, including the implementation of a federally designed motor vehicle inspection and maintenance program. Noncompliance has already triggered a third-party lawsuit against local metropolitan planning agencies. These agencies rely on the emission reductions of the Program to acquire approval and federal funding for transportation improvement projects.

While these economic concerns are important, improving the air quality is essential to the health of all Californians. Senior citizens, the infirm, and children are at greatest risk from poor air quality. The USEPA estimates that between five and twenty percent of the population is especially susceptible to the effects of ozone, an airborne chemical that reacts in chemically adverse ways on internal body tissues.

In a joint letter to the USEPA explaining how the shortfall could be eliminated, the ARB and the BAR asserted that near-term improvements to the Program would result in a statewide emission reduction of almost 14 tpd by 2002. By 2005, the benefit increases to almost 22 tpd, and in 2008, the benefit reaches its maximum projected value of 24.1 tpd. The proposed improvements include: more stringent emission cutpoints, loaded-mode

testing for heavy-duty trucks, a remote sensing component, improved evaporative testing, and more vehicles directed to test-only stations.

The California Legislature anticipated the changing nature of the Program by granting BAR the power to periodically revise the specifications of the inspection equipment used at smog check stations. Concerned about test consistency and consumer protection, the Legislature also empowered BAR to certify the inspection equipment, including the software that controls the operation of the emission analyzers.

The emission analyzer operating software is produced by the manufacturers of the emission analyzers in accordance with the specifications adopted by the BAR. Section 44036 requires BAR to release the proposed software specifications to the manufacturers for comment and review. In this case, the revised specifications have two subparts: “Addendum 7,” originally released in 1999, and “Addendum 8,” released in May 2001. Manufacturers have already offered their comments within the time period specified by law. The revised software that stations will be required to buy under the adoption of this regulation contains both subparts.

Underlying Data:

- *Revised State Implementation Plan for California’s Motor Vehicle Inspection & Maintenance Program*, Bureau of Automotive Repair, December 1995.
- *Evaluation of California’s Enhanced Vehicle Inspection and Maintenance Program (Smog Check II)*, California Air Resources Board, July 12, 2000.
- Program Improvement Plan, Letter dated August 17, 2000, from Air Resources Board to Regional Administrator, Region IX, U. S. Environmental Protection Agency.
- Part 51.357 of Title 40 of the Code of Federal Regulation

Business Impact:

Smog Check Stations

This regulation will have a significant effect on smog check stations operating in the enhanced program areas since they will have to purchase new Bureau certified software for their BAR-97 EIS analyzers. Equipment manufacturers have indicated to BAR that the price of the new software should be no more than \$1,500, and in some cases, could be as little as \$800, depending on the equipment brand and whether the equipment is covered by a service agreement.

Since the Bureau does not have the statutory authority to regulate inspection prices, it is anticipated that inspection costs will rise as stations attempt to recoup their investment in the new software.

Consumer Impact

As mentioned above, stations will more than likely increase the inspection price to offset the expenditures for the new software. Even using the higher cost of \$1,500, the average station in the enhanced program areas could recover that cost in a six-month period by increasing the price of an inspection by a little less than \$3. Since smog checks are only required every two years and upon a vehicle's transfer of ownership, the increased price of an inspection is not a cost incurred monthly or even annually. However, there are approximately 6,533,382 vehicles inspected annually in the enhanced areas of the state. Based on this, the Bureau estimates that the overall impact to consumers from the increase in test prices will total approximately \$19,600,146.

Specific Technologies or Equipment:

This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

While the program enhancements have been identified at a macro or program level, the actual implementation occurs at the station level. In essence, the software that resides in each BAR-certified emissions analyzer guides the technician through the proper smog check inspection procedure and provides a mechanism for the technician to enter the relevant data into the analyzer. In other words, a change to the Program necessitates changes to analyzer software.

For example, as mentioned earlier, one of the critical Program improvements is the loaded-mode testing of heavy-duty vehicles. Heavy-duty vehicles cannot be subjected to the loaded-mode test without the station's use of the revised software. The same is true for tougher cutpoints and fuel evaporative pressure testing; without the revised software, smog check technicians cannot be guided through the inspection procedure.

Moreover, Section 44036 of the Health and Safety Code requires smog check stations to use specific technologies and equipment, as certified by the Bureau. This section also requires the Bureau to adopt operational and certification standards and specifications for the required equipment and authorizes periodic revision.

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

No reasonable alternative has been considered or identified.